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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,061

01/20/2004

Maurice Blanchette

16231-1US SC/sm

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10/17/2006

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EXAMINER

GABLER, PHILIP FRANCIS

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,061	Applicant(s) BLANCHETTE, MAURICE	
	Examiner Philip Gabler	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 September 2006 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3-7, and 9-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "corners being formed solely by one... column and two... profiles" beginning on the eighth line of the claim. It is unclear how this limitation is to be applied, particularly the word "solely." The invention of the instant application clearly shows fasteners (24) as well as a corner braces (20) that appear to be part of the corner construction. The claim is accordingly deemed indefinite.

5. Claims 3-7 and 9-13 are deemed indefinite as being dependent on an indefinite claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick (US Patent Number 3420484) in view of Shelton (US Patent Number 2238348) and Marschak (US Patent Number 3749343). Mattick (Figures 1-3 and 5) discloses a platform assembly (T, Mattick's Figure 1) comprising a weldless frame (components S and L) including at least three side profiles (S) bolted together so as to define a part of a floor, said at least three side profiles each include a folded sheet forming a beam member (S) of C-shaped cross-section, a support column (L) at each corner of said frame, said support column being bolted to said weldless frame, each of said corners being formed solely by one of said support columns and two of said side profiles (at least in as much as Applicant's) extending laterally away therefrom and connected directly thereto (the ends of the side profiles are attached directly to the support columns), said two side profiles having an intermediate web portion (10), and top (11) and bottom (12) flanges folded at about 90 degrees from said intermediate web portion, said bottom flange having a terminal edge portion folded about 90 degrees.

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Mattick does not disclose top and bottom terminal edge portions folded inwardly, a guard rail or a specific material for construction, but does disclose the use of metal. Note that the claim recites a product by process limitation ("cold-formed"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device. The use of various flange arrangements for side members is well known in the art as shown by Marschak, who (Figure 3) discloses a shelf/table having a side profile with an intermediate web portion and top and bottom flanges folded at about 90 degrees from said intermediate web portion, said top and bottom flanges having respective terminal edge portions folded inwardly towards one another at about 90 degrees to said top and bottom flanges. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include top and bottom terminal edge portions folded inwardly on Mattick's side profiles, as taught by Marschak, as determined by the needs or desires of a user or to provide a stronger, more substantial side profile design.

Shelton discloses (Figures 1 and 7) a guard rail projecting upwardly from a portion of a surface (10). Further, the use of steel sheet is well known in the art. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform to include a guard rail assembly as taught by Shelton because this would keep objects from falling from the platform (see Shelton column 1 lines 50-51), as well as using steel in the construction of the assembly because of its low cost and high strength. Mattick's table, modified as described above, would be

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capable of providing a safe area for any person standing on the floor of the platform assembly.

8. Regarding claim 3, Mattick further discloses an open side of said side profiles faces inwardly of said weldless frame.

9. Regarding claim 4, Mattick further discloses side profiles (S) provided with connecting tabs (16) at opposed longitudinal ends thereof, each of said connecting tabs defining a number of holes (14) and (17) for receiving fasteners in order to achieve mechanical connections directly between adjacent profiles and associated one of said support columns at each of said corners (Figure 3 clearly shows a direct connection between the side profiles and an associated column).

10. Regarding claim 5, Mattick further discloses connecting tabs that are folded at 90 degrees (indicated by A in Exhibit 1).

11. Regarding claim 6, Mattick further discloses support columns (L) with two open sides (opposite of sides 3).

12. Regarding claim 7, Mattick further discloses that the open sides face inwardly of said weldless frame (see Figure 2), and wherein each of the cold-formed support columns has a first upstanding portion (3) extending along a first side of the frame, a second upstanding portion (also labeled 3) extending along a second side of the frame, said first and second upstanding portions being provide with respective inwardly bent flanges (6) defining said two open sides therebetween.

13. Regarding claim 9, Mattick further discloses a corner brace (G) at each corner of said frame, each brace being bolted to adjacent profiles extending from the corner.

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14. Regarding claim 10, Mattick, when modified as described above, discloses a number of guard rail posts (Shelton's 24), said guard rail post being made from C-shaped profiles. Note that this claim recites a product by process limitation ("cut and folded"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device.

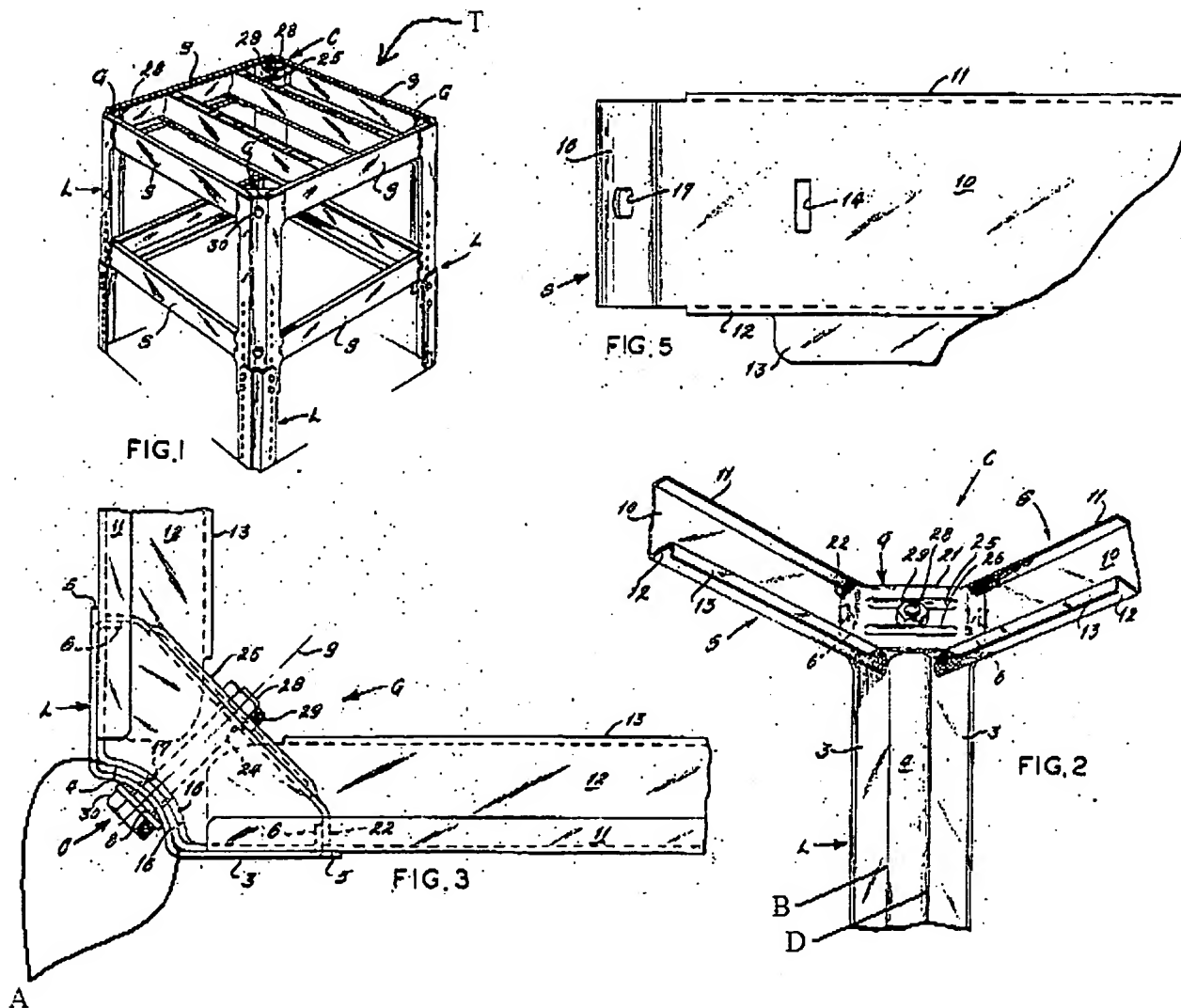
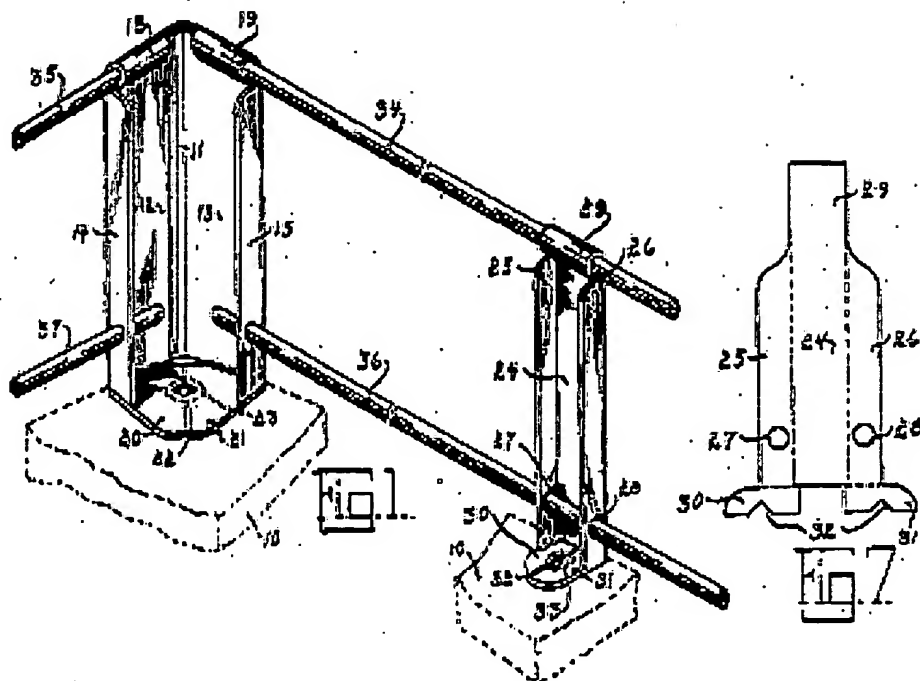
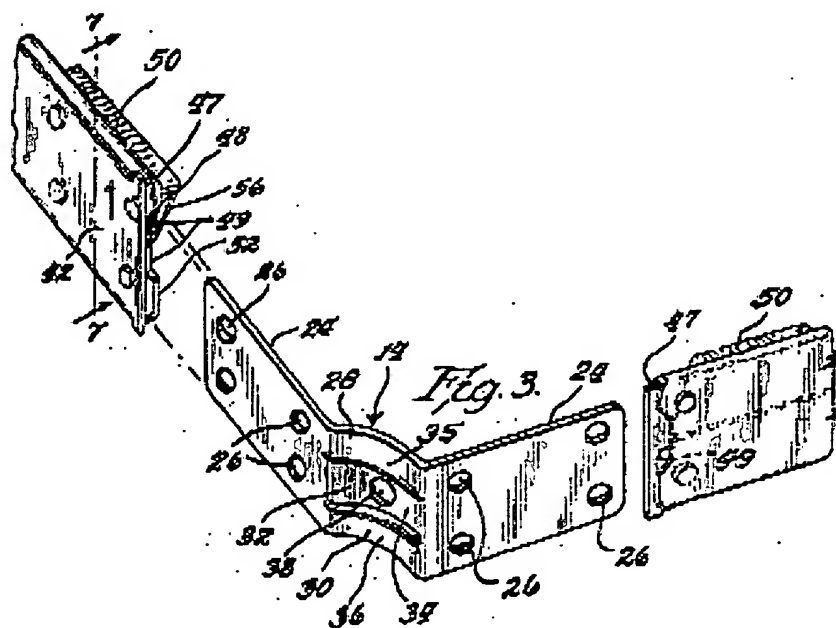


Exhibit 1: Mattick '484 Figures 1-3 and 5



Shelton '348 Figures 1 and 7



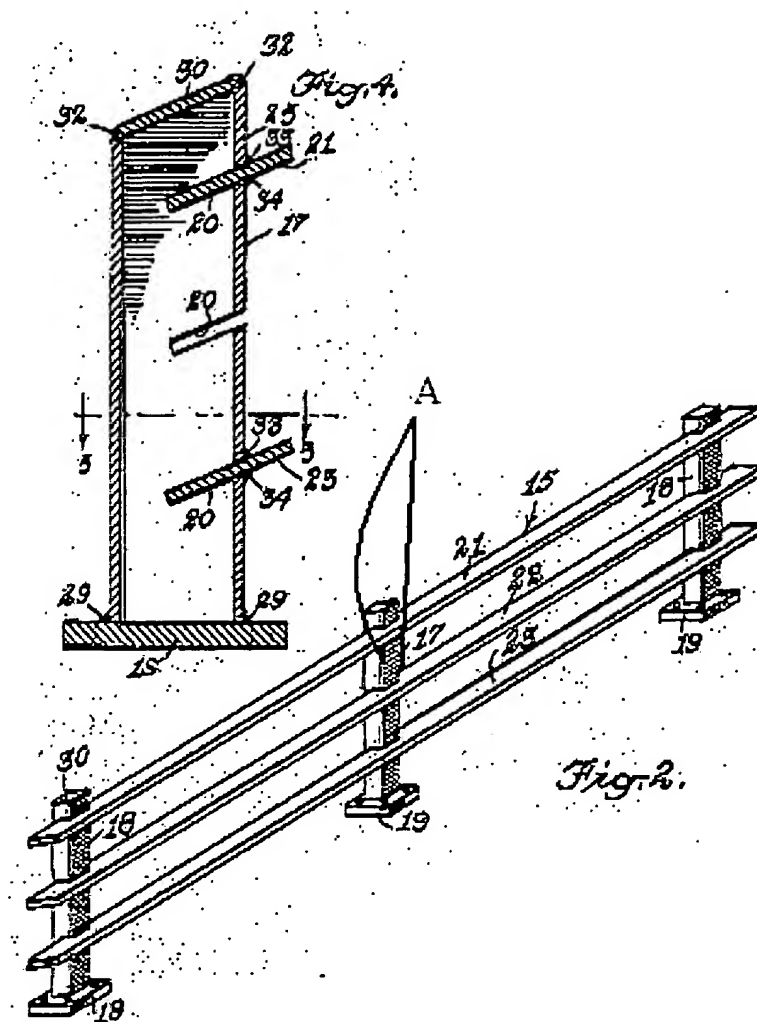
Marschak '343 Figure 3

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15. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mattick in view of Shelton and Marschak and further in view of Diamond (US Patent Number 2733897). Mattick, when modified by Shelton and Marschak as described above, discloses a platform as recited in claim 10 but does not disclose a hole extending through fold lines defining a receiving cavity. Diamond (Figures 2 and 4) discloses a guard rail post having two parallel longitudinal folds (viewed as A in Exhibit 2) and wherein an oblong hole (20) extends transversely through said folds to define a rail receiving cavity on a back side of the post. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mattick's platform, previously modified by Shelton and Marschak, to include an oblong hole through the post (by simply connecting Shelton's holes 27 and 28) to receive a rail as taught by Diamond because this arrangement would provide a simpler method of mounting rails to the guard rail post.

16. Regarding claim 12, Shelton further discloses a solid tubular rail (36) mounted in his receiving cavity. Note that this claim recites a product by process limitation ("welded"). The product itself does not depend on the process of making it and this limitation would not be expected to impart distinctive structural characteristics to the device.

17. Regarding claim 13, Shelton further discloses a depression (29) defined at the top end of the guard rail post extending across said folds so as to define a seat for receiving a hand rail.



Diamond '897 Figures 2 and 4

Response to Arguments

18. Applicant's arguments filed 8 September 2006 have been fully considered but they are not persuasive. While Mattick's design may be somewhat different ~~that than~~ Applicant's invention, Mattick's table meets the claim limitations as described in the above rejections. His corner is formed solely of side profiles and a column in as much as Applicant's corner is.

for

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19. Regarding the motivation for mounting a guard rail, as previously stated, there exists a desire "in display racks, counters, shelving, **and the like**," (which would certainly encompass tables) to "place a multiplicity of rails... in order to keep merchandise from falling from the supporting surface." Whether or not the intended objects are people, Mattick's table, modified as described above, meets the claim limitations, as it is capable of functioning as a platform to support a person.

20. The remainder of Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.


Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Gabler whose telephone number is (571) 272-6038. The examiner can normally be reached on Monday through Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PFG 
10/10/2006


JAMES O. HANSEN
PRIMARY EXAMINER